

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSHUA WILES,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity,  
NEW YORK CITY POLICE OFFICER PASTULA,  
NEW YORK CITY POLICE OFFICERS "JOHN  
DOES 1-10",

Defendants.

**ANSWER ON BEHALF  
OF THE CITY OF NEW  
YORK AND POLICE  
OFFICER PASTULA**

**13 CV 2898 (HB) (HBP)**

**JURY DEMANDED**

-----X  
Defendants, CITY OF NEW YORK AND POLICE OFFICER PASTULA, by  
their attorney, **MICHAEL A. CARDOZO**, Corporation Counsel of the City of New York, as  
and for their answer to the Complaint, respectfully allege, upon information and belief, as  
follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint except admit that plaintiff purports to proceed as stated therein.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "2" of the Complaint; except admit plaintiff was arrested on November 5, 2011 and September 17, 2012.
3. Deny the allegations set forth in paragraph "3" of the Complaint except admit that plaintiff purports to attach executed §160.50 releases.
4. Deny the allegations set forth in paragraph "4" of the Complaint except admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.
5. Deny the allegations set forth in paragraph "5" of the Complaint except admit that plaintiff purports to invoke the Court's jurisdiction as stated therein.

6. Deny the allegations set forth in paragraph “6” of the Complaint except admit that plaintiff purports to lay venue as stated therein.

7. Paragraph "7" of the complaint sets forth a jury demand to which no response is required.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Admit the allegations set forth in paragraph “9” of the Complaint.

10. Deny the allegations set forth in paragraph “10” of the Complaint except, admit that the City of New York maintains a police force and respectfully refer the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City and the New York City Police Department.

11. Deny knowledge or information sufficient to form a belief with respect to any unidentified parties, except admit that Police Officer Pastula is employed by the New York City Police Department, and state that whether any individuals were acting under supervision or according to their official duties is an averment of law to which no response is required. To the extent a response is required, defendants deny knowledge or information sufficient to form a belief with respect to those allegations.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Deny the allegations set forth in paragraph "14" of the Complaint, and state that whether the acts were carried out with actual or apparent authority is an averment of law to which no response is required.

15. Deny the allegations set forth in paragraph "15" of the Complaint, and state that whether the actions were done in the scope and furtherance of employment is an averment of law to which no response is required.

16. Defendants are unable to respond to the allegations in paragraph "16" of the Complaint as it appears to be out of context.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "20" of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Complaint.

25. Deny the allegations set forth in paragraph "25" of the Complaint except admit that Plaintiff was arrested on November 15, 2011.

26. Deny the allegations set forth in paragraph “26” of the Complaint except admit that plaintiff was charged as stated therein.

27. Deny the allegations set forth in paragraph “27” of the Complaint.

28. Deny the allegations set forth in paragraph “28” of the Complaint.

29. Deny the allegations set forth in paragraph “29” of the Complaint except admit plaintiff was processed at the 5<sup>th</sup> precinct.

30. Deny the allegations set forth in paragraph “30” of the Complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Complaint.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny the allegations set forth in paragraph “36” of the Complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the Complaint.

38. Deny the allegations set forth in paragraph “38” of the Complaint.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the Complaint.

41. Deny the allegations set forth in paragraph “41” of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “42” of the Complaint, except admit plaintiff was handcuffed as incident to his arrest.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint, except admit plaintiff was placed in a NYPD vehicle.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint except admit plaintiff was held for less than one hour.

45. Admit the allegations set forth in paragraph “45” of the Complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the Complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Admit the allegations set forth in paragraph “49” of the Complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “50” of the Complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the Complaint.

52. Deny the allegations set forth in paragraph “52” of the Complaint except admit plaintiff was patted down.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the Complaint.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “54” of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Deny the allegations set forth in paragraph “59” of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “60” of the Complaint.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “61” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

63. Deny the allegations set forth in paragraph “63” of the Complaint.

64. Deny the allegations set forth in paragraph “64” of the Complaint.

65. Deny the allegations set forth in paragraph “65” of the Complaint.

66. Deny the allegations set forth in paragraph “66” of the Complaint.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “67” of the Complaint.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “68” of the Complaint.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “69” of the Complaint.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “70” of the Complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “71” of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “72” of the Complaint.

73. In response to paragraph “73” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

74. Deny the allegations set forth in paragraph “74” of the Complaint.

75. Deny the allegations set forth in paragraph "75" and its subparts of the Complaint.

76. Deny the allegations set forth in paragraph “76” of the Complaint.

77. Deny the allegations set forth in paragraph “77” of the Complaint.

78. Deny the allegations set forth in paragraph “78” of the Complaint.

79. Deny the allegations set forth in paragraph “79” of the Complaint.

80. Deny the allegations set forth in paragraph “80” of the Complaint.

81. In response to paragraph “81” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

82. Deny the allegations set forth in paragraph “82” of the Complaint.

83. Deny the allegations set forth in paragraph “83” of the Complaint.

84. Deny the allegations set forth in paragraph “84” of the Complaint.

85. Deny the allegations set forth in paragraph “85” of the Complaint.

86. Deny the allegations set forth in paragraph “86” of the Complaint.

87. In response to paragraph “87” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

88. Deny the allegations set forth in paragraph “88” of the Complaint.

89. Deny the allegations set forth in paragraph “89” of the Complaint.

90. Deny the allegations set forth in paragraph “90” of the Complaint.

91. Deny the allegations set forth in paragraph “91” of the Complaint.

92. Deny the allegations set forth in paragraph “92” of the Complaint.

93. Deny the allegations set forth in paragraph “93” of the Complaint.

94. Deny the allegations set forth in paragraph “94” of the Complaint except admit that plaintiff was arrested on the dates stated therein.

95. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “95” of the Complaint.

96. Deny the allegations set forth in paragraph “96” of the Complaint.

97. Deny the allegations set forth in paragraph “97” of the Complaint.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “94” of the Complaint.

99. Deny the allegations set forth in paragraph “99” of the Complaint.

100. Deny the allegations set forth in paragraph “100” of the Complaint.



101. Deny the allegations set forth in paragraph “101” of the Complaint.

102. In response to paragraph “102” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

103. Deny the allegations set forth in paragraph “103” of the Complaint.

104. Deny the allegations set forth in paragraph “104” of the Complaint.

105. Deny the allegations set forth in paragraph “105” of the Complaint.

106. Deny the allegations set forth in paragraph “106” of the Complaint.

107. Deny the allegations set forth in paragraph “107” of the Complaint.

108. Deny the allegations set forth in paragraph “108” of the Complaint.

109. Deny the allegations set forth in paragraph “109” of the Complaint.

110. Deny the allegations set forth in paragraph “110” of the Complaint.

111. Deny the allegations set forth in paragraph “111” of the Complaint.

112. In response to paragraph “112” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

113. Deny the allegations set forth in paragraph “113” of the Complaint.

114. Deny the allegations set forth in paragraph “114” of the Complaint.

115. Deny the allegations set forth in paragraph “115” of the Complaint.

116. Deny the allegations set forth in paragraph “116” of the Complaint.

117. Deny the allegations set forth in paragraph “117” of the Complaint.

118. Deny the allegations set forth in paragraph “118” of the Complaint.

119. Deny the allegations set forth in paragraph “119” of the Complaint.

120. In response to paragraph “120” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

121. Deny the allegations set forth in paragraph “121” of the Complaint.

122. Deny the allegations set forth in paragraph “122” of the Complaint.

123. Deny the allegations set forth in paragraph “123” of the Complaint.

124. Deny the allegations set forth in paragraph “124” of the Complaint.

125. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “125” of the Complaint.

126. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “126” of the Complaint.

127. Deny the allegations set forth in paragraph “127” of the Complaint.

128. Deny the allegations set forth in paragraph “128” of the Complaint.

129. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “129” of the Complaint.

130. Deny the allegations set forth in paragraph “130” of the Complaint.

131. Deny the allegations set forth in paragraph “131” of the Complaint.

132. Deny the allegations set forth in paragraph “132” of the Complaint.

133. Deny the allegations set forth in paragraph “133” of the Complaint.

134. Deny the allegations set forth in paragraph “134” of the Complaint.

135. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “135” of the Complaint.

136. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “136” of the Complaint.

137. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “137” of the Complaint.

138. Deny the allegations set forth in paragraph “138” of the Complaint.

139. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “139” of the Complaint.

140. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “140” of the Complaint.

141. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “141” of the Complaint.

142. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “142” of the Complaint.

143. Deny the allegations set forth in paragraph “143” of the Complaint.

144. Deny the allegations set forth in paragraph “144” of the Complaint.

145. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “145” of the Complaint.

146. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “146” of the Complaint.

147. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “147” of the Complaint.

148. Deny the allegations set forth in paragraph “148” of the Complaint.

149. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “149” of the Complaint.

150. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “150” of the Complaint.

151. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “151” of the Complaint.

152. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “152” of the Complaint.

153. Deny the allegations set forth in paragraph “153” of the Complaint.

154. Deny the allegations set forth in paragraph “154” of the Complaint.

155. Deny the allegations set forth in paragraph “155” of the Complaint.

156. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “156” of the Complaint.

157. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “157” of the Complaint.

158. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “158” of the Complaint.

159. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “159” of the Complaint.

160. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “160” of the Complaint.

161. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “161” of the Complaint.

162. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “162” of the Complaint.

163. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “163” of the Complaint.

164. Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph “164” of the Complaint.

165. Deny the allegations set forth in paragraph “165” of the Complaint.

166. Deny the allegations set forth in paragraph “166” of the Complaint.

167. Deny the allegations set forth in paragraph “167” of the Complaint.

168. Deny the allegations set forth in paragraph “168” of the Complaint.

169. In response to paragraph “169” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

170. Deny the allegations set forth in paragraph “170” of the Complaint.

171. Deny the allegations set forth in paragraph “171” of the Complaint.

172. Deny the allegations set forth in paragraph “172” of the Complaint.

173. Deny the allegations set forth in paragraph “173” of the Complaint.

174. Deny the allegations set forth in paragraph “174” of the Complaint.

175. Deny the allegations set forth in paragraph “175” of the Complaint.

176. Deny the allegations set forth in paragraph “176” of the Complaint.

177. In response to paragraph “177” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

178. Deny the allegations set forth in paragraph “178” of the Complaint.

179. Deny the allegations set forth in paragraph “179” of the Complaint.

180. Deny the allegations set forth in paragraph “180” of the Complaint.

181. Deny the allegations set forth in paragraph “181” of the Complaint.

182. Deny the allegations set forth in paragraph “182” of the Complaint.

183. In response to paragraph “183” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

184. Deny the allegations set forth in paragraph “184” of the Complaint.

185. Deny the allegations set forth in paragraph “185” of the Complaint.

186. Deny the allegations set forth in paragraph “186” of the Complaint.

187. Deny the allegations set forth in paragraph “187” of the Complaint.

188. In response to paragraph “188” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

189. Deny the allegations set forth in paragraph “189” of the Complaint.

190. Deny the allegations set forth in paragraph “190” of the Complaint.

191. Deny the allegations set forth in paragraph “191” of the Complaint.

192. Deny the allegations set forth in paragraph “192” of the Complaint.

193. Deny the allegations set forth in paragraph “193” of the Complaint.

194. In response to paragraph “194” of the Complaint defendants repeat and re-allege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

195. Deny the allegations set forth in paragraph “195” of the Complaint.

196. Deny the allegations set forth in paragraph “196” of the Complaint.

197. Deny the allegations set forth in paragraph “197” of the Complaint.

198. Deny the allegations set forth in paragraph “198” of the Complaint.

199. Deny the allegations set forth in paragraph “199” of the Complaint.

200. Deny the allegations set forth in paragraph “200” of the Complaint.

- 201. Deny the allegations set forth in paragraph “201” of the Complaint.
- 202. Deny the allegations set forth in paragraph “202” of the Complaint.
- 203. Deny the allegations set forth in paragraph “203” of the Complaint.

**FIRST AFFIRMATIVE DEFENSE:**

The complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE:**

Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, nor have defendants violated any Act of Congress providing for the protection of civil rights.

**THIRD AFFIRMATIVE DEFENSE:**

Any injury alleged to have been sustained resulted from plaintiffs’ own culpable or negligent conduct or that of a third party and was not the proximate result of any act of defendants.

**FOURTH AFFIRMATIVE DEFENSE:**

Plaintiffs may have failed to comply with the conditions precedent to suit.

**FIFTH AFFIRMATIVE DEFENSE:**

There was probable cause for plaintiffs’ arrest, detention and prosecution.

**SIXTH AFFIRMATIVE DEFENSE:**

Plaintiffs’ claims may be barred by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE:**

At all times relevant to the acts alleged in the amended complaint, defendant City, its agents and officials, acted reasonably, properly, lawfully and in good faith in

the exercise of their discretion. Consequently, defendant City of New York is entitled to governmental immunity.

**EIGHTH AFFIRMATIVE DEFENSE:**

Plaintiffs may have failed, in whole or in part, to comply with New York General Municipal Law § 50(e), §50-h, §50-k and §50-i.

**NINTH AFFIRMATIVE DEFENSE:**

Plaintiffs provoked any incident.

**TENTH AFFIRMATIVE DEFENSE:**

Punitive damages cannot be awarded against the City of New York.

**ELEVENTH AFFIRMATIVE DEFENSE:**

Plaintiffs have failed to mitigate their alleged damages.

**TWELFTH AFFIRMATIVE DEFENSE:**

At all times relevant to the acts alleged in the amended complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**THIRTEENTH AFFIRMATIVE DEFENSE:**

The individually named defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore they are entitled to qualified immunity from liability.

**WHEREFORE**, defendants respectfully request that the Complaint be dismissed in its entirety, that the court enter judgment for defendants, and that defendants be granted costs, fees, and disbursements together with such other and further relief as the Court deems just and proper.



Dated: New York, New York  
July 19, 2013

**MICHAEL A. CARDOZO**  
Corporation Counsel of the  
City of New York  
*Attorney for Defendants City of New York &  
Police Officer Pastula*  
100 Church Street, Room 3-160  
New York, N.Y. 10007-2601  
(212) 356-2323

By: /s/  
JOY T. ANAKHU (JA-0126)  
Special Assistant Corporation Counsel  
Special Federal Litigation Division

To: (VIA ECF)  
David A. Thompson  
**Stecklow Cohen & Thompson**  
10 Spring Street, Suite 1  
New York, NY 10012

13 CV 2898 (HB) (HBP)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSHUA WILES,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**ANSWER TO COMPLAINT**

**MICHAEL A. CARDOZO**

Corporation Counsel of the City of New York  
*Attorney for Defendants City of New York & Officer Pastula*  
100 Church Street, Room 3-160  
New York, New York 10007-2601

Of Counsel: Joy T. Anakhu  
Tel.: (212) 356-2323

NYCLIS No.: 2013-016424

*Service of which is hereby acknowledged:*

....., N.Y. Dated: .....

Signed: .....

Print Name: .....

Attorney for: .....